

No. 22-7783

IN THE SUPREME COURT OF THE UNITED STATES

PINKNEY CLOWERS, III, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 21-31) that the lower courts erred in treating a prior judicial finding of drug quantity as binding in denying his motion for a sentence reduction pursuant to Section 404 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5222. For the reasons set forth in the government's brief in opposition in Harper v. United States, No. 23-27 (filed Nov. 9, 2023), the government agrees with petitioner that when authorizing district courts to "impose a reduced sentence," § 404(b), 132 Stat. 5222, Congress envisioned that courts would do so in a manner consistent with Apprendi v. New Jersey, 530 U.S. 466 (2000), which allows an increase in a defendant's statutory sentencing range

only when a jury has found the conditions for that increase (other than the fact of a prior conviction) beyond a reasonable doubt.¹

As further explained in that brief, however, that issue does not warrant this Court's review. See Harper Br. in Opp. at 12-14. Petitioner identifies no other court of appeals that has adopted the Eleventh Circuit's outlier interpretation; the circuit conflict on the question presented is lopsided and of limited practical significance; and the question presented is of declining prospective importance, in light of the diminishing set of potential Section 404 movants whose motions would implicate it. See ibid.

The petition for a writ of certiorari should be denied.²

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

NOVEMBER 2023

¹ The government has served petitioner with a copy of the government's brief in opposition in Harper.

² The government waives any further response to the petition unless this Court requests otherwise.